

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

OMAR STRATMAN,

Plaintiff,

v.

LEISNOI, INC., KONIAG, INC., and
GALE A. NORTON, Secretary of the
Interior,

Defendants.

Case No.: 3:02-cv-0290 (JKS)

OMAR STRATMAN'S MOTION FOR STATUS CONFERENCE AND STATUS REPORT

I. Motion presented.

Because of the unique procedural posture of this case and the complexity of the issues, Mr. Stratman requests, for some of the reasons set forth below, that the Court hold a status conference to set a briefing schedule and address other preliminary matters.

II. Case status and related issues.

A. Stay dissolves 21 days after the Secretary of Interior completes review of *Omar Stratman v. Leisnoi, Inc.* 157 IBLA 302.

By "Order from Chambers" dated June 3, 2003 (Docket No. 34), the Court ordered the stay of this matter to lift 21 days after the Secretary's issuance of his position on this matter. Mr. Stratman received, by fax, the Secretary's single-sentence adoption of Deputy Solicitor Jensen's memorandum on Friday, December 22, 2006. The Federal defendant lodged the Secretary's decision January 8, 2007. This case thus becomes active as early as January 10, 2007, or as late as January 29, 2007, depending upon how the Court's order of 6/3/03 is interpreted.

B. Status of pleadings.

At Docket No. 28, this Court granted Mr. Stratman's motion to file a Second Amended

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Complaint. On or about May 30, 2003, Koniag filed an answer and counter-claim (Docket 32).

Mr. Stratman intends to shortly file an answer to Koniag's counter-claim. Neither Leisnoi nor the Federal defendant have answered Stratman's Second Amended Complaint.

Given the Secretary's recent adoption of the Deputy Solicitor's memorandum opinion, Mr. Stratman will need to seek leave to file a Third Amended Complaint.

C. Logistical and Procedural Considerations.

One need not be a prophet to expect that Leisnoi, Koniag, and the U.S. will wish to sustain and enforce the Secretary's recent adoption of a deputy solicitor's opinion/memorandum in favor of Leisnoi's certification. Conversely, Mr. Stratman will wish to be critical of that election and seek to enforce the administrative decisions by the ALJ and IBLA. These proceedings, however they are viewed, thus have a number of features of an Administrative Procedure Act appeal.

Local Rule 16.3 purports to control, absent contrary order, "appeals under the Administrative Procedure Act." It demands filing the agency record sixty days after the initial appearance by defendants. Defendants have appeared in this proceeding long ago. We thus need the Court's direction as to whether the rule applies and that sixty days hence (approximately sixty days from Mr. Kempthorne's adoption of the deputy solicitor's memorandum) the agency record should be filed with the Court. We need confirmation that the Federal defendant is to accomplish that filing. Local Rule 16.3 goes on to provide for a briefing schedule to follow filing of the agency record. We respectfully suggest that the parties need the Court's direction on whether or not it intends to follow the procedure described in Local Rule 16.3 (whether or not receipt of the agency record is required under the circumstances and whether or not the briefing schedule in this rule will be adhered to).

MICHAEL J. SCHNEIDER, P.C.

1400 K STREET, SUITE 202
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-5006
FAX (907) 274-8111

Mr. Stratman expects that the underlying administrative proceedings will be challenged by competing motions for summary judgment. A status conference with the Court is thus required to address at least the procedural choices below:

- 1) Filing of the administrative record and briefing per the procedure outlined in Local Rule 16.3; or
- 2) Some other procedure defined by the Court.

III. Conclusion.

For the reasons set forth above, and in reliance on the record in this case to date and in A76-132 Civil, Mr. Stratman respectfully seeks a status conference before the Court to address the matters above, establish a briefing schedule, and to resolve such other housekeeping matters as the parties and the Court deem appropriate under the circumstances.

RESPECTFULLY submitted this 11th day of January, 2007.

s/Michael J. Schneider
Law Offices of Michael J. Schneider, P.C.
880 "N" Street, Suite 202
Anchorage, AK 99501
Phone: (907) 277-9306
Fax: (907) 274-8201
E-mail: mjspc@gci.net
Alaska Bar No. 7510088

CERTIFICATE OF SERVICE

I hereby certify that **OMAR STRATMAN'S MOTION FOR STATUS CONFERENCE AND STATUS REPORT** served electronically on the 11th day of January, 2007, on Bruce M. Landon, R. Collin Middleton, and John R. Fitzgerald.

s/Michael J. Schneider

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